licensed person to drive his motor-cycle in contravention of section 25(2) of the Road Traffic Ordinance and of allowing his motor-cycle to be used while an insurance policy was not in force in contravention of section 74 of the Road Traffic Ordinance. On the first charge he was fined $10 and on the second charge he was fined $20 but the Magistrate refrained from making an order relating to his driving licence on the grounds that he required the use of his motor-cycle to get to his place of work; that he had many dependants to support and that he was a sick man.

Against these sentences the Public Prosecutor has now appealed on the ground that they are inadequate.

For myself, and I say this for the instruction of Magistrates in general, I do not consider a fine of $10 adequate for the offence of driving without a licence nor do I consider a fine of $20 adequate for the offence of allowing an uninsured motor vehicle to be used on the road.

In that connection I must ask Magistrates to read again what I said on the subject of penalties for statutory offences in the case of *Public Prosecutor* v. *Yap Hon Min.* [1]

In the present case I do not propose to increase these fines for a reason which I shall state presently.

With regard to the question of suspension of driving licences, Magistrates have been reminded again and again of the relevant provisions of section 74 of the Road Traffic Ordinance. If a person allows a motor vehicle to be used on the road without there being in force a policy of insurance in relation to its user then an offence is committed and the offender is liable to be imprisoned for three months or to be fined an amount not exceeding $1,000 or to both such imprisonment and fine and he must also have his driving licence suspended for a period of not less than twelve months unless the Court for special reasons to be specified in it thinks fit to order otherwise. Again, it has been said repeatedly that the special reasons mentioned in that section are not special reasons connected with the offender but special reasons connected with the commission of the offence. The authority for that proposition is to be found in the judgment of Lord Goddard C.J. in *Whittall* v. *Kirby* [2] which I do not propose to quote at length.

In fairness to Magistrates who, in my experience, are always most anxious to do their best, I do not think there is any disposition to disregard the law or what has been said about it, but I do think there is a certain amount of misunderstanding because some statements of the law have been over academic and metaphysical.

I do not propose to attempt to give a large number of illustrations because if I did so I would in effect be making the law myself which is none of my business.

But when I speak of reasons special to the offender I mean just the sort of reasons that the Magistrate acted on in this case, that is that it will be difficult for him to get to his work, that he is a poor man and so forth. These are reasons special to the offender and they are not reasons on which a Magistrate is entitled to act.

The reasons on which he is entitled to act are reasons special to the offence and it will perhaps be sufficient to give one example. That is the case where it is urgently necessary to take a sick person to hospital and the only conveyance available is a motor vehicle whose insurance has happened to run out. If that happened it would be a reason special to the offence and could be a reason for the Magistrate, if he saw fit, to exercise his discretion under the section to refrain from making an order for disqualification.

In the present case there were no such reasons. No such reasons were stated before the Magistrate and I have been at some pains to ascertain from the respondent that there were in fact no special reasons.

In the circumstances the law demanded that he should be disqualified for a period of at least one year and the Magistrate not having made that order and the case now being before me it is now my duty to make it.

I said a few minutes ago I will give my reason for not touching the monetary penalties in this case. The reason is that in my experience the most satisfactory penalty for most motoring offences is disqualification. A fine is paid once and then forgotten. A disqualification means that for 365 days the accused person is reminded every morning that it is a bad thing to break the law and so where an order for disqualification is made, except of course in serious cases of being drunk in charge or dangerous driving, the quantum of the monetary penalty imposed is of minor importance.

In the present case the order for disqualification will run from the date of conviction.

Order accordingly.

PUBLIC PROSECUTOR v. YAP CHONG FATT

[A. Cr. J. (Thomson C.J.) December 21, 1962]

[K.L. — Selangor Criminal Appeal No. 65 of 1962]

Criminal Procedure — First offender — Sentence — When probation instead of imprisonment — Period of imprisonment for first offenders.

The respondent aged 24, and a first offender, was convicted for housebreaking and sentenced to two weeks' imprisonment which he duly served. The amount of property involved was about $50. The Public Prosecutor appealed.

Held: in the case of a young adult hitherto of good character where his first offence is not of great intrinsic gravity the proper course is to put him on probation. If the offence is too serious for that and merits imprisonment, then a sentence of imprisonment should be imposed which will have some effect not only on the

offender but also as a deterrent and which will give the Prisons Department some opportunity of trying to remedy such defect of character. In the peculiar circumstances of the case the appeal was dismissed although the proper imprisonment in this case was something from 9 months to one year.

MAGISTRATE'S CRIMINAL APPEAL.

H. R. Sankey (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Thomson C.J. (delivering oral judgment): This is an appeal by the Public Prosecutor against a sentence imposed on one Yap Chong Fatt who was convicted for housebreaking in the Magistrate's Court at Kuala Lumpur and sentenced to two weeks' imprisonment. The amount of property involved is about $50.

The only other relevant facts are that he is 24 years old, that he is a first offender and, so far as can be ascertained by the Police and the Probation Officer, he is not of bad character.

He has served his sentence of 14 days' imprisonment and was released from prison some days ago and in the circumstances I think it would be unduly harsh to send him back to prison to serve a longer sentence. Also in the circumstances I do not think I have power to bind him over.

For the benefit of Magistrates, however, I want to observe that in a case like this 14 days' imprisonment was the wrong punishment.

Normally in the case of a young adult hitherto of good character where his first offence is not of great intrinsic gravity the proper course is to put him on probation. If the offence is too serious for that and merits imprisonment then a sentence of imprisonment should be imposed which will have some effect not only on the offender but also as a deterrent and which will give the Prisons Department some opportunity of trying to remedy such defect of character as there may be.

In my opinion the proper sentence in this case, if the accused was not to be bound over and if imprisonment was thought necessary, (and it probably was necessary) was one of something from 9 months to a year.

However, as I have said, in the peculiar circumstances of this case I think it would be wrong to send him back to prison now and I therefore dismiss the appeal.

I would add that in my opinion it was a very proper case for the Public Prosecutor to enter an appeal so as to give me this opportunity of making something clear which I hope will be carefully considered by Magistrates throughout the country.

Appeal dismissed.

PUBLIC PROSECUTOR v. QUEK BAK SENG

[A. Cr. J. (Gill J.) December 8, 1962]

[Muar — Criminal Appeal No. 36 of 1962]

Penal Code, s.304A — Causing death by rash and negligent act — Sentence where there is a high degree of rashness.

Where a high degree of rashness is established in a charge under section 304A of the Penal Code, a sentence of a fine would be an inadequate punishment.

Case referred to:—

(1) *R.* v. *Downey* [1954] M.L.J. 148.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

T. Singam for the respondent.

Gill J. (delivering oral judgment): The respondent in this case was charged with and convicted of an offence under section 304A of the Penal Code and sentenced to a fine of $600 and in default 4 months' imprisonment. An order was also made disqualifying the respondent from holding a driving licence in respect of lorries Class (G) for a period of 12 months. The Public Prosecutor now appeals against the sentence which he says was manifestly inadequate in that the learned President of the Sessions Court, Muar, failed to consider his finding that the accused had acted not merely rashly but with a very high degree of rashness in attempting to overtake the other vehicle whilst his vehicle was loaded with workers, and that the accident resulted in the loss of four lives.

I do not consider it necessary to go into details of the evidence adduced by the prosecution against the respondent at his trial. It is sufficient if I state that on 5th January, 1962, at about 2.15 p.m. at Kampong Laku, Kepong Mines, Main Road, Pagoh the respondent was driving a 5 tonner truck carrying 41 workmen home from the mine after their morning shift. Immediately before the accident he was following a similar truck which at one stage was 25 yards ahead of him in the centre of the road and he was attempting to overtake the other truck notwithstanding the fact that the driver of the other truck had indicated by a hand signal that the respondent should slow down. There was some evidence that the respondent was at that stage driving at approximately 40 miles per hour. Then there was the evidence that as the respondent was trying to overtake the truck in front of him his truck went into the swamp on the right hand side as a result of which four of the passengers in his truck lost their lives.

On that evidence the learned President found that the respondent in attempting to overtake the other vehicle at the scene whilst his truck was loaded with workers, had acted not merely rashly but with a very high degree of rashness.